IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1436

THE OIL SHALE CORPORATION; ENERGY RESOURCES TECHNOLOGY LAND, INC.; JOSEPH B. UMPLEBY; WASATCH DEVELOPMENT CO.; BARNETT T. NAPIER; GRACE A. SAVAGE; JOAN L. SAVAGE; MAUDE B. FARNUM; ST. CLAIR NAPIER CATLIN; WILLIAM H. FARNUM, JR.; JOHN R. FARNUM; JOHN W. SAVAGE; NEIL S. MINCER; GARDNER C. CATLIN; ELIZABETH YOUNG FARNUM HINDS; and PENELOPE CHASE BROWN, individually and as Trustee, *Petitioners,*

v.

THOMAS S. KLEPPE, Secretary of the Interior, *Respondent.*

REPLY TO THE BRIEF IN OPPOSITION

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1. It should be noted at the outset that respondent's position in opposing the grant of the writ represents a complete reversal of its position before this Court when the same case was previously before it. At that time respondent stated:

> Although the issues before the Court are thus limited and will not terminate this litigation how-

> ever resolved, they are nonetheless of major significance for the disposition and rational exploitation of this important national resource. Here, as would not generally be true, there is a massive body of claims located in one area, pertaining to one mineral, and known to have been almost entirely cancelled in the proceedings that led to *Virginia-Colorado*. After more than twenty-five years had passed and less than two percent of the claims had been reduced to patent (74,000 out of over 4,000,000 acres embraced by the old claims) it became imperative to seek new means of development. Obviously, the task of clearing out the old claims to prepare for the future will be considerably aided if the Secretary is able to attach some significance to the history of cancellation and subsequent neglect. Under the holding of the court below, he cannot. (Reply to the Brief in Opposition in *Hickel* v. *Oil Shale Corporation* at 3.)

Respondent now suggests that it is no longer important to obtain a prompt judicial determination of the principal issue posed by this test case since its inception twelve years ago. Instead, respondent states it may "materially advance the ultimate resolution of this lawsuit" if "*all* of the potential issues in this case" (Resp. Brief at 8, emphasis in original) are litigated within the Interior Department before the current validity of the old contest proceedings is judicially resolved.

To buttress this patently absurd argument, respondent makes the novel suggestion that a ruling on the merits by the court below would not have advanced the ultimate disposition of this case because that court would have required additional time to render such a decision (Resp. Brief at 7). This case was fully

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briefed and argued on the merits by both sides on April 30, 1975. The court below took 5 months to issue its opinion and an additional 4½ months to deny without opinion petitioners' request for rehearing or rehearing *en banc*. The issue presented to the court below for decision has been litigated at considerable length and would not appear to pose any unusual difficulties for any court of appeals to decide within a 9½ month time frame.

2. Respondent contends the mandate in *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, did not direct the lower courts to pass upon the current validity of the old contest proceedings prior to resolving other issues. However, the Court's opinion, which is quoted in petitioners' brief at p. 7, clearly indicates the contrary. After stating that all issues relevant to the current validity of the contest proceedings will be open on remand, this Court then stated that "[*t*]*o the extent that they are found void, not controlling, or subject to review*" all other issues relevant to the invalidity of the claims will be open. The Court's opinion thus clearly specified the order in which the issues open for determination should be decided. On remand in 1971, the court below apparently so construed the mandate because it remanded the case to the District Court, not to Interior, for further proceedings.

Furthermore, as petitioners point out in their petition at 11, the sequence specified by this Court is highly logical in that it is not appropriate or necessary to reach issues within the primary jurisdiction of Interior until the issue ripe, indeed, overripe for determination in the courts—the current validity of the contest decisions—is decided. If the contest decisions

were ruled to be valid, this case is terminated. If the contest decisions are invalid, as the District Court held, other objections to those claims may be advanced by Interior but the scope of the litigation within Interior would be greatly reduced (and perhaps entirely obviated by a settlement between the parties). By turning its back on twelve years of litigation and requiring all potential issues to be litigated (which in some instances means relitigated) within Interior, the decision of the court below clearly fails to comply with the only logical construction of this Court's mandate.

3. While the courts obviously have inherent authority to regulate the management of litigation on their dockets, the court below refused to rule on a case properly before it and instead ordered the commencement of administrative proceedings to resolve issues not raised by either side. Such an abstention from the exercise of jurisdiction finds no precedent in the cases cited by respondent[1] and the cases cited at page 14 of the petition are clearly controlling.

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[1] *Colorado River Water Conservation District* v. *United States*, 44 U.S.L.W. 4372 (U.S. March 24, 1976) and *Kerotest Manufacturing Co.* v. *C-O-Two Fire Equipment Co.*, 342 U.S. 180 (1952) involve the contemporaneous exercise of concurrent jurisdiction by Federal and State courts on the one hand and by Federal courts on the other. Although those cases are thus totally inapposite to the present situation, the opinion in *Colorado River* does refer to "the virtually unflagging obligation of the Federal courts to exercise the jurisdiction given them." 44 U.S.L.W. at 4377.

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CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

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